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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,182	12/06/2001	Thomas J. Coleman		4099

7590 09/17/2003
Melvin L. Crane
318 South Cleveland Street
Arlington, VA 22204-2038

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/003,182	COLEMAN ET AL.	
	Examiner	Art Unit	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph for being indefinite. Claim 1 recites "the body." It is not clear what "the body" refers to and lacks antecedent basis. Similarly, in claim 5, the phrase "is removable" is indefinite. What is the upper portion of the housing removable from?

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlotter et al (4,914,748) in view of DSN Retailing Today, v. 39, n. 11, page 80), North American New Product Report (6, 3/9/93, page 11), Product Alert (v. 27, n. 8, 4/28/97), Food Processing (v. 60, n. 10, page 62, 10/99), Product Alert (3/15/93), and Brand Strategy (n.69, 9/30/94), further in view of Coleman (5,370,884), Coleman et al (5,921,841) and Fishman (6,077,144).

In regard to claim 1, Schlotter et al ('748), discloses a main housing and a lollipop secured to an upper end of the housing. Claim 1 differs from Schlotter in that the lollipop comprises a candy with different colors, which will color a person's tongue with different colors. It is not clear from the specification or the claims whether there are multiple lollipops with each one comprising a color or one lollipop, which contains

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multiple colors on the one lollipop. In any case, as evidenced by DSN Retailing Today, it was conventional in the art to provide a lollipop with colors that is capable of painting the tongue a swirl of five colors. North American New Product Report, Product Alert, (4/97) Food Processing, Product Alert (3/93) and Brand Strategy all can be relied on to teach it was well established in the art to provide candy with edible dyes to color the tongue. Once it was known to provide candy with tongue coloring dyes, whether one employed a single color per candy or employed multiple colors would have been an obvious matter of choice. Finally, claim 1 recites a lollipop. Since Schlotter et al ('748) discloses a candy attached to a support it is considered to be a lollipop. Note, too, on the basis of claim 3, wherein the candy is molded onto the nipple, applicants also appear to define lollipop in the same manner. In any case, if one were not to construe this as a lollipop, Coleman ('884), Coleman et al ('841) and Fishman all teach it was well established in the art to attach a hard candy on a stick onto a stick support that is part of a housing and to modify Schlotter et al ('748), if necessary, and substitute one conventional candy arrangement and its support for another conventional candy arrangement and its support for its art recognized and applicants' intended function would have been obvious. In regard to claims 3 and 4, as noted above, the art taken as a whole teach the conventionality of both a lollipop molded on a nipple and a nipple having an aperture. In regard to claim 5, Schlotter et al ('748) teaches an upper portion of a housing being removable from the rest of the housing. In regard to claim 8, Schlotter et al ('748) teaches the conventionality of a battery and light bulb in the housing and a switch.

Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-11 above, and further in view of Coryell (1,734,116), Noble (1,685,769), Brodesser (2,157,476) and Gallart et al (6,221,407).

Claim 12 recites that the housing includes a slot, coloring cartridge and a button for sliding the article upward through the housing. Once it was known to provide the main housing of a lollipop support with a second conventional utility as taught by Schlotter et al ('748), the particular conventional structure and the conventional utility derived therefrom would have been an obvious matter of choice as evidenced by Noble (1,685,769), Coryell (1,734,116) and Brodesser (2,157,476), further in view of Gallart et al (6,221,407). The claim recites a conventional marking holder and dispenser. As evidenced by Coryell, Noble and Brodesser, markers and other products such as foods, that are associated with slotted guides and means extending through the slots to move the articles, are notoriously old. Gallart et al is only relied on as further evidence of the conventionality of providing a housing for a candy for containing other elements. In regard to claim 13, to modify Schlotter et al ('748) and combine both a conventional light system and a conventional marking system would have been obvious in view of the art taken as a whole.

Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-11 above, and further in view of Dorfman et al (6,217,136) who teaches the conventionality of a clasp, chain and a clasp secured to the chain wherein the combination is attached to a house for containing food and specifically candy such that the housing containing the candy can be attached to a

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person or object. This is applicants' reason as well for providing such structure. To modify the combination and provide the conventional clasp/chain/clasp structure for its art recognized and applicants' intended function would have been obvious.

The remainder of the references cited on the USPTO 892 forms are cited as pertinent art.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (703) 308-0650. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone number for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

S. Weinstein/dh
September 2, 2003

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
9/10/03